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1945.

O. Collective Fines /45

File No.

Legal Department

A **BRANCH**

Subject:—

Opinions Under the Collective Fines Ordinances 1942

O Collective Fines /45

File No.

Gen. 194 e.

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C O N T E N T S

Legal Department File. No. O.Collective Fines/45

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Office of the R.L.A.

This relates to notices of suits given under section 80 of the Civil Procedure Code by 14 inhabitants of the Patidar community of the village Sarbhan in the Broach and Panch Mahals District. The notices raise a question under the Collective Fines Ordinance No. XX of 1942. By notification dated 13th June 1944, the Government imposed a collective fine of Rs.20,000/- on the inhabitants of the Patidar community only of village Sarbhan Section 3(3) of the Ordinance provides that 'the District Magistrate, after such enquiry as he may deem necessary shall apportion such fine among the inhabitants who are laible collectively to pay it, and such apportionment shall be made according to the District Magistrate's Judgment of the respective means of such inhabitants." The District Magistrate accordingly directed the Mamlatdar to suggest apportionment of fine and to submit demand notices for the approval and signature of the District Magistrate. The Mamlatdar however, before or without doing as directed received the required amount from the 14 plaintiffs in these notices. In the result no apportionment orders came to be issue by the District Magistrate.

2. The plaintiffs contend that the recovery was illegal and intended to sue for a refund. The question referred to the R.L.A. is whether the omission of the formal apportionment of the fine...

fine under section 3(3) of the Ordinance can be successfully defended if the shits are filed.

3. According to the palintiffs, the Mamlatdar issued a notice to them on 17th June 1944 informing them of the Government notification and immediately on 18thm June 1944 he proceeded to the village with a party of police, ~~xkx~~called a meeting of the inhabitants and told them 'that ~~xhx~~if they do not pay up the fine within three hours, strong measures will be taken against the inhabitants." Thus accordingx to the palaintiffs the required sum of Rs.20,000/- was recovered from them. It appears that a separate receipt was passed in favour of each of the plaintfffs mentioning the amount paid by him.

4. The District Magistrate states that the Mamlatdar reports that the question of approtionment did not arise, becuase the whole fine was fully paid by the Patidars through 13 leading persons of the village. It may be conceded that if the inhabitants valuntarily collected between themselves and paid up the required sum, the payment would be a just and legal satisfaction of the total demand made in the Government notification; an ~~xxxxxxxx~~apportionment by the District Magistrate would, in the event, have been unecessary and its absence would not vitiate the acceptance of the money. The liability of the inhabitants as a body existed even before the apportionment;

only the separate and direct liability of individual inhabitants to Government would bot have come into being without the apportionment. It is true that even for such voluntary payment the inhabitants will have to determine for themselves their respective contributions, but this determination will not have affected the conscience of Government and no individual inhabitant though he may have made his contribution unwillingly could legally claim a refund from the Government,

5. Whether or not in this particular case there was voluntary payment as described above is a question of fact, and would depend upon the extent of the Mamlatdar's interference with the decision of thecommunity. Unfoartumatly the District Magistrate's report does not deal specifically with the allegation by the plaintiffs about the use of coercion ~~does not deal specifically with the allegation by the~~ For the present it only appears from the notices that the plaintiffs are in possession of separae receipts passed to them individually. The amount paid by each of the plaintiff may have been determine by the community or in some way by the Mamlatdar. If considered necessary the Home Department may probably call for a detailed report from the Mamlatdar in pafticular the latter might state the contents of the receipts. But in any case it is clear that the question of fact as describe above will be determined by the Court on the evidence before it, The result of the suits,in filxed, will depend, not on the abstarct question of law set out in para 2 above, but on the facts as they will be found by the Court.

6. Another question referred to the E.L.A.is whether Government can take shelter under section 4 of the Ordinance which provides that "no suit, prosecution or other legal proceeding whatsoever shall lie against any

person.....

person for or in respect of anything which is in good faith done or intended to be done under this Ordinance." It is clear from the section that it is intended to protect a person in respect of any act done by him; it will not enable Government to retain money which has been recovered otherwise than under or according to the Ordinance.

Id/- P.N.M.
8/6/45

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No.4368,
dated the 8th June 1945.

JPE.10/7/56.
4 copies.

Office of the R.L.A.

It is presumed thatthe fines were refunded by Government exgratia, without prejudice to their legal right to impose such fines in accordance with the law. In these cases the fines appear to have been refunded to the plaintiffs out of court. Since suits for the refund of the fines were pending, a more appropriate course would have been to inform the court that without prejudice to their contentions Government were prepared to refund the fines ex gratia, provided the suits were unconditionally withdrawn. Future interest and costs of the suitx are however matters in the discretion of the court and while it is not possible to state with certainty that the Court will disallow these claims the fact that the fines have already been refunded to the plaintiffs ex gratia and that therefore the principal cause of action no longer survives, ought to weigh with the court in exercising its discretion in favour of Governmens. H.D., may request the District Magistrate to instruct the District Government Pleader to put this view before the court.

Id/- P.N.M.
17/7/46

Remembrancer of Legal Affairs.

U.S.R. to H.D.(Spl.) NO.203-P,
dated the 18th July 1946.

JPE.10/7/56.
4 copies.